#### MAIL TO:

STATE OF UTAH
DIVISION OF PURCHASING
3150 STATE OFFICE BUILDING, STATE CAPITOL
P.O. BOX 141061
SALT LAKE CITY, UTAH 84114-1061
TELEPHONE (801) 538-3026
http://www.purchasing.state.ut.us

## **Request for Proposal**



Date Sent: October 10, 2002

NO3033

11/05/02 at 3:00 P.M.

Solicitation Number:

Due Date:

# **Agency Contract**

Goods and services to be purchased: ENVIRONMENTAL CONSULTING FOR THE REGIONAL HAZE STATE INFORMATION PLAN (SIP)

## Please complete

Company Name		Federal T	ax Identification Number
Ordering Address	City	State	Zip Code
Remittance Address (if different from ordering address)	City	State	Zip Code
Type  ☐ Corporation ☐ Partnership ☐ Proprietorship ☐ Government	Company Contact Person		
Telephone Number (include area code)	Fax Number (include area code)		
Company's Internet Web Address	Email Address		
Discount Terms (for bid purposes, bid discounts less than 30 days will not be considered)	Days Required for Delivery After Receipt of Order (see attached for any required minimums)		
The following documents are included in this solicitation: Soli specifications. Please review all documents carefully before  The undersigned certifies that the goods or services offered a in Utah. Yes No If no, enter where produced, etc.	completing.  are produced, mined, gro	J	•
Offeror's Authorized Representative's Signature	Date		
Type or Print Name	Position or Title		

## STATE OF UTAH DIVISION OF PURCHASING

## **Request for Proposal**

Solicitation Number: NO3033

Due Date: 11/05/02

**Vendor Name:** 

ENVIRONMENTAL CONSULTING FOR THE REGIONAL HAZE STATE INFORMATION PLAN (SIP) PER THE ATTACHED RFP.

QUESTIONS ON SPECIFICATIONS CALL JAN MILLER AT (801) 536-4042.

QUESTIONS ON PURCHASING PROCESS (NOT RELATED TO SPECIFICATIONS) CALL NANCY ORTON AT (801) 538-3148.

RX: 480 3200000003

#### **REQUEST FOR PROPOSAL - INSTRUCTIONS AND GENERAL PROVISIONS**

- 1. **PROPOSAL PREPARATION:** (a) All prices and notations must be in ink or typewritten. (b) Price each item separately. Unit price shall be shown and a total price shall be entered for each item bid. (c) Unit price will govern, if there is an error in the extension. (d) Delivery of services as proposed is critical and must be adhered to. (e) Incomplete proposals may be rejected. (f) This proposal may not be withdrawn for a period of 60 days from the due date. (g) Where applicable, all proposals must include complete manufacturer's descriptive literature. (h) By signing the proposal the offeror certifies that all of the information provided is accurate, that they are willing and able to furnish the item(s) specified, and that prices offered are correct.
- 2. SUBMITTING THE PROPOSAL: (a) The proposal must be signed in ink, sealed, and if mailed, mailed in a properly-addressed envelope to the DIVISION OF PURCHASING, 3150 State Office Building, Capitol Hill, Salt Lake City, UT 84114-1061. The "Solicitation Number" and "Due Date" must appear on the outside of the envelope. (b) Proposals, modifications, or corrections received after the closing time on the "Due Date" will be considered late and handled in accordance with the Utah Procurement Rules, section 3-209. (c) Your proposal will be considered only if it is submitted on the forms provided by the state. Facsimile transmission of proposals to DIVISION will not be considered. (d) All prices quoted must be both F.O.B. Origin per paragraph 1.(c) and F.O.B. Destination. Additional charges including but not limited to delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, costs of bonds, or for any other purpose must be included in the proposal for consideration and approval by the Division of Purchasing & General Services (DIVISION). Upon award of the contract, the shipping terms will be F.O.B. Destination, Freight Prepaid with freight charges to be added to the invoice unless otherwise specified by the DIVISION. No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, costs of bonds, or for any other purpose will be paid by the state unless specifically included in the proposal and accepted by DIVISION. (e) By signing the proposal the offeror certifies that all of the information provided is accurate and that he/she offers to furnish materials/services for purchase in strict accordance with he requirements of
- 3. **BONDS:** The state has the right to require a bid or proposal bond, payment bond and/or a faithful performance bond from the offeror in an amount not to exceed the amount of the contract.

this proposal including all terms and conditions.

- 4. **PROPRIETARY INFORMATION:** Suppliers are required to mark any specific information contained in their bid which is not to be disclosed to the public or used for purposes other than the evaluation of the bid. Each request for non-disclosure must be accompanied by a specific justification explaining why the information is to be protected. Pricing and service elements of any proposal will not be considered proprietary. All material becomes the property of the state and may be returned only at the state's option. Proposals submitted may be reviewed and evaluated by any persons at the discretion of the state.
- 5. **BEST AND FINAL OFFERS:** Discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements. Prior to award, these offerors may be asked to submit best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by a competing offeror.
- 6. **SAMPLES:** Samples, brochures, etc., when required, must be furnished free of expense to the state and if not destroyed by tests may, upon request made at the time the sample is furnished, be returned at the offeror's expense.
- 7. **DIVISION APPROVAL:** Contracts written with the State of Utah, as a result of this proposal, will not be legally binding without the written approval of the Director of the DIVISION.
- 8. **AWARD OF CONTRACT:** (a) The contract will be awarded with reasonable promptness, by written notice, to the lowest responsible offeror whose proposal is determined to be the most advantageous to the state, taking into consideration price and evaluation factors set forth in the RFP. No other factors or criteria will be used in the evaluation. The contract file shall contain the basis on which the award is made. Refer to Utah Code Annotated 65-56-

- 21. (b) The DIVISION can reject any and all proposals. And it can waive any informality, or technicality in any proposal received, if the DIVISION believes it would serve the best interests of the state. (c) Before, or after, the award of a contract the DIVISION has the right to inspect the offeror's premises and all business records to determine the offeror's ability to meet contract requirements. (d) The DIVISION will open proposals publicly, identifying only the names of the offerors. Proposals and modifications shall be time stamped upon receipt and held in a secure place until the due date. After the due date, a register of proposals shall be established. The register shall be open to public inspection, but the proposals will be seen only by authorized DIVISION staff and those selected by DIVISION to evaluate the proposals. The proposal(s) of the successful offeror(s) shall be open for public inspection for 90 days after the award of the contract(s). (e) Utah has a reciprocal preference law which will be applied against bidders bidding products or services produced in states which discriminate against Utah products. For details see Section 63-56 20.5 -20.6, Utah Code Annotated.
- 9. **ANTI-DISCRIMINATION ACT:** The offeror agrees to abide by the provisions of the Utah Anti-discrimination Act, Title 34 Chapter 35, U.C.A. 1953, as amended, and Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities. Also offeror agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the workplace. Vendor must include this provision in every subcontract or purchase order relating to purchases by the State of Utah to insure that the subcontractors and vendors are bound by this provision.
- 10. WARRANTY: The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah applies to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgement to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.
- 11. **DEBARMENT:** The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by the STATE.
- 12. **GOVERNING LAWS AND REGULATIONS:** All State purchases are subject to the Utah Procurement Code, Title 63, Chapter 56 <u>Utah Code Annotated 1953</u>, as amended, and the Procurement Rules as adopted by the Utah State Procurement Policy Board (<u>Utah Administrative Code</u> Section R33). These are available on the Internet at www.purchasing.state.ut.us.

#### SCOPE OF WORK - BID NUMBER NO3003

## **Environmental Consulting Services for the Regional Haze State Information Plan (SIP)**

## I. Background

DAQ intends to submit to EPA an approvable State Implementation Plan (SIP) for regional haze under 40 CFR 51.309. Because the SIP is due by December 31, 2003, it is imperative that development of Utah's SIP begin by mid-2002. SIP development includes involving a broad array of stakeholders statewide in the process to ensure their understanding and support for the development approach and ultimate control measures, as well as preparing a draft of the SIP.

Because all existing Utah SIPs and maintenance plans must be re-written during the same time period using the new EPA model for estimating emissions for mobile sources, and because legislative action in 2002 requires evaluation of emission reductions achieved through the vehicle inspection and maintenance programs, DAQ does not have the staff resources to undertake preparation of the regional haze SIP. This situation, coupled with the regional nature of visibility impairment addressed by 40 CFR 51.309 and the technical work undertaken by the Western Regional Air Partnership on behalf of western states, provides an opportunity for DAQ to experiment with a new method for stakeholder involvement in the SIP development process, and for actual writing of the SIP itself.

All of Utah's mandatory Class I federal areas were studied by the Grand Canyon Visibility Transport Commission (GCVTC) during the mid 1990s, thus making submittal of a regional haze SIP under 40 CFR 51.309 the most viable option for Utah. Section 309 implements the recommendations of the GCVTC, and specifies that states submitting and implementing SIPs under its provisions have met the rule's reasonable progress test through 2018, the first planning period under the rule.

DAQ is seeking consulting services from a firm (hereinafter referred to as "Consultant" or "Contractor") to assist in the development of the Regional Haze SIP. The project includes three components. The first component is to develop and implement a work plan for orienting stakeholders to the science of regional haze, the requirements of the federal regional haze rule, and the support and work products available from the Western Regional Air Partnership (WRAP). An important part of this component is to identify the issues and concerns of Utah stakeholders, and to work with DAQ and the stakeholders to resolve those issues.

The second component is to draft parts of the SIP not drafted by the WRAP and its contractors, ensuring that the document follows the template prepared under a WRAP contract, includes all components required under the Regional Haze rule, and will be approvable by EPA. Developing a SIP from materials prepared by a regional organization has not been done before in Utah, and DAQ seeks a proposal from a contractor who can set forth a more detailed plan of how this project may best be implemented.

The third component is to draft parts of the SIP pertaining to Class I areas outside the state of Utah that may be affected by emissions from sources within Utah. Again, this will be based on materials from the WRAP, and DEQ seeks a proposal from a contractor who can set forth a detailed plan for how this may best be done.

In this Request for Proposal, DAQ is not seeking offers for logistic activities, such as making room arrangements, facilitating meetings, and drafting meeting summaries. Such logistical activities will be handled by DAQ staff and/or a separate contractor.

At the beginning of the project, the Executive Director of DEQ will designate a Stakeholder Advisory Group to assist the Consultant during the work plan development process. This group will represent

most of the diverse interests in the regional haze program, including regulatory (both state and tribal); local government; industrial, commercial, and recreational business; environmental; and academia. This group, along with DAQ senior staff, will assist the Consultant in the initial review of the Consultant's draft work plans.

#### II. Administrative and Contractual Information

- A. The contract under consideration by DAQ is for up to \$50,000 for the period through March 31, 2004. Specific questions on the contractual services to be provided should be addressed to Jan Miller at 801-536-4042. Questions on the response procedures should be addressed to Nancy Orton at the Utah Division of Purchasing at 801-538-3148. Conferences to discuss this RFP will be arranged upon request. Travel, printing and other expenses shall be the responsibility of the contractor.
- B. Response to this RFP must be sent to the Utah Division of Purchasing no later than **November 5, 2002** at 3:00 PM. Proposals received after this date and time will not be accepted. The mailing address is:

State of Utah Division of Purchasing Room 3150 State Office Building Capitol Hill Salt Lake City, UT 84114

Please mark the outside of envelope with bid number NO3003 and due date and time of November 5, 2002 at 3:00 PM.

- C. The State of Utah is an Equal Opportunity Employer. Small-, minority-, and women-owned businesses are encouraged to submit an RFP.
- D. Minimum qualifications. All respondents must be able to provide sufficient staff to complete assigned tasks within the time specified in the Scope of Work. Resumes of staff members must be provided. The respondent must have experienced staff at his disposal at the time the contract is awarded. An experienced staff member is one who has a science or engineering degree and at least two years of directly related air quality experience.

### III. Definition and Scope of Work.

To address the components and tasks outlined below, the contractor will at least review the following information:

- The federal Regional Haze rule (40 CFR 51.308-309, published at 64 FR 35714 on July 1, 1999);
- Recommendations for Improving Western Vistas, June 1996. The Final Report of the Grand Canyon Visibility Transport Commission, June 1996. (<a href="http://wrapair.org/WRAP/Reports/GCVTCFinal.PDF">http://wrapair.org/WRAP/Reports/GCVTCFinal.PDF</a>);
- Annex to the Report of the Grand Canyon Visibility Transport Commission to the U.S. Environmental Protection Agency, September 29, 2000. (<a href="http://www.wrapair.org/index.html">http://www.wrapair.org/index.html</a>);
- The WRAP 2002 Work Plan and update. (<a href="http://www.wrapair.org/index.html">http://www.wrapair.org/index.html</a>);
- The WRAP Policy for Categorizing Fire Emissions (<a href="http://www.wrapair.org/index.html">http://www.wrapair.org/index.html</a>);
- Other reports available on the WRAP Web site;
- SIP templates (http://www.westar.org/haze\_template.htm.)

### Component 1

The contractor will prepare and carry out a work plan for involving stakeholders in the development of the Utah Regional Haze SIP. The contractor will be responsible for developing the presentation materials and handouts

as needed, for making presentations to stakeholder groups, for responding to stakeholder issues and concerns via additional meetings or conference calls, and for reporting to DAQ staff weekly to summarize the work planned, in progress and completed, as well as issues that stakeholders regard as unsettled.

The Consultant will act as both a leader in the plan development process and as a subject matter expert to the various stakeholders, both individually and collectively. In developing the plan, the Consultant will need to confer with various WRAP Forum Co-chairs to determine anticipated deliverables and schedules. In addition, the Consultant shall confer with each of the members of the Stakeholder Advisory Group to ensure that their concerns are properly reflected in the plan development.

DAQ staff members believe that a two-step outreach process with stakeholder groups can effectively introduce stakeholders to regional haze and the SIP process, and effectively can create a positive climate for developing the SIP. The first phase is to orient stakeholder groups to the science of regional haze, the requirements of the regional haze rule, and the work of the WRAP, and can assess stakeholder interest in further participation in development of the SIP. The second round of meetings with stakeholder groups is to convey the results of the WRAP's technical work including expected visibility improvements, expected costs for various stakeholder interests, and expected changes in employment and earnings within Utah as a result of implementation of the regional haze SIP.

The contractor's plan should include the following items at a minimum, and DAQ seeks proposals that go beyond these items in ways that benefit stakeholder understanding of regional haze and the SIP development process:

- ? Proposed determination of where stakeholder views can be most helpful in the SIP development process;
- ? Proposed organization structure for the SIP development process;
- Proposed procedures to ensure coordination between DAQ staff and stakeholders within the SIP development process, and between the SIP development process and the WRAP development process; and
- ? Preliminary work plan and schedule for the SIP development process that identifies key tasks and deliverables, and the dependency between tasks and deliverables, taking account of tasks and deliverables already scheduled by DAQ staff.
- ? Proposal must contain staffing and billing rates. These rates will be used throughout the project. Only the Scope of Work will be negotiated for Components 2 and 3.

The draft work plan should be as complete as possible to assist in communication with the stakeholders. The Consultant will assist DAQ in packaging the draft work plan for distribution to the Stakeholder Advisory Group for review one week prior to a meeting with that group.

The Consultant will coordinate any feedback and answer questions from stakeholders and DAQ staff received prior to the meeting, and prepare the necessary meeting briefing materials. The Consultant will meet with the Stakeholder Advisory Group and DAQ staff to clarify issues and receive feedback on the draft work plan.

The Consultant will develop the final draft of the work plan based on feedback received at the meeting with the Stakeholder Advisory Committee, and any other updated information from the WRAP forums and DAQ staff. The Consultant will assist DAQ in updating the master stakeholder contact list and outreach/recruiting materials for participants in the SIP development process. The Consultant will assist DAQ in packaging the final work plan and outreach/recruiting materials for distribution to all stakeholders.

#### Component 2

Component 2 will consist of the work necessary to develop the SIP and will begin no later than January 1, 2003, and will be completed no later than December 1, 2003. No offer is required for the Component 2 work at this

time since the scope of work will not be known until the Scope of Work is developed and approved by DAQ and the stakeholders. As such, work orders during Phase II will be handled as the needs are identified.

#### Component 3

Component 3 will consist of the work to develop the SIP for Class I areas outside the State of Utah that may be affected by emissions from sources within the State. The work will begin concurrently with Component 2 but may be completed as late as March 31, 2004.

#### Deliverables

For Component 1, the deliverables include:

- The presentation materials and handouts for stakeholders for posting on the DAQ Web site the day they are used;
- Brief notes from each presentation, noting numbers present and key participants by name and company or organization;
- Summaries of issues of concern to each group of stakeholders and/or individual participants, with notes RE commitments to follow up with individuals or the group as a whole.

The contractor will arrange and attend meetings with stakeholders and make presentations and answer questions.

For Component 2, the deliverable is an approvable draft Regional Haze SIP and a complete list of items needed in the Technical Support Documentation for submittal to EPA. The draft materials shall be completed by June 1, 2003, with the final product due by December 1, 2003.

For Component 3, the deliverable is an approvable draft Regional Haze SIP by March 31, 2004, and a complete list of items needed in the Technical Support Documentation for submittal to EPA.

#### Schedule

The following table displays the major work items in preparation of the regional haze SIP. The last five items in the table are not flexible; they are deadlines within the State of Utah process for making rules and adopting SIPs. Earlier dates and work items are somewhat flexible, and we request the contractor's views as to what should be included and what deadlines are realistic.

Major Tasks	Time Period	
Brief the Air Quality Board	May 13, 2002	
Conduct meetings for stakeholders to consider options	Late May – October 2002	
Review technical results from wrap; involve stake-holders	July – October 2002	
in considering implications		
Prepare any necessary statute changes	Summer 2002	
Establish a Stakeholder Advisory Committee as liaisons	By October 2002	
with stakeholder groups		
Draft SIP and any necessary rules	January – June 2003	
Scoping meetings around the state	June 2003	
Revise draft SIP and rules for mailing to AQB	By August 15, 2003	
AQB propose in-state SIP and rules for public comment	September 3, 2003	
Public comment period on SIP and rules	October 1 – 31, 2002	
AQB adopt SIP and rules	December 3, 2003	
Submit SIP, rules, technical support documents to EPA	December 30, 2003	
AQB propose SIP and rules for Class I areas outside Utah	March 3, 2004	
Public comment period for SIP and rules	April 1 – May 1, 2004	

AQB adopt SIP and rules	June 2, 2004
Submit SIP, rules, technical support documents to EPA	July 1, 2004

### IV. Format of Response

- A. Discuss the manner in which you propose to achieve the purpose and scope of work delineated in this RFP.
- B. Describe your organization's experience:
  - Preparing technical reports and conducting statistical and engineering analyses of air quality data, especially regional haze data.
  - Working with federal and state air quality rules, especially regional haze.
- C. Include relevant resumes of staff members and a list of relevant major projects that your organization has completed, and projects that are currently in progress.
- D. Discuss your preferred manner of disbursement.
- E. Discuss your previous contractual work with the UDAQ or the Utah Department of Environmental Quality, if any.
- F. List the billing rate for each staff classification that will be involved in the project.
- G. Discuss other items you feel are of importance to this RFP, such as possible conflicts of interest.

#### V. Evaluation Process and Criteria

The qualifications of an organization will be evaluated based on the following items. Each area of the evaluation criteria must be clearly detailed in proposal:

- A. Familiarity with the federal Regional Haze rule (40 CFR 51.308-309, published at 64 FR 35714 on July 1, 1999) and the science of visibility impairment. (15 points)
- B. Experience in educating stakeholder groups and supporting their work in developing air quality SIPs and recommendations, especially stakeholder groups working in regional haze planning, most especially the Grand Canyon Visibility Transport Commission and the Western Regional Air Partnership. (30 points)
- C. Thoroughness and insight displayed in preparation of the plan for outreach to stakeholders. Creativity and viability of the bidder's plan to free up staff time for DAQ staff to pursue other work, without sacrificing the stakeholders' need to be informed and consulted regarding DAQ decisions regarding regional haze planning. (25 points)

#### D. Cost (30 points)

Each item will be given up to the number of points listed above, depending on the candidate's experience and approach.

### VI. Response to the RFP

The response to this RFP shall be in accordance with Utah rules R24-5-530 through R24-5-650.

## VII. Consultant Qualifications

Key competencies being sought from the Consultant include:

Demonstrated experience leading stakeholder-driven regulatory processes, including the ability to work with individuals from varied stakeholder interests, and the ability to communicate with all levels of individuals within an organization;

Demonstrated understanding and expertise on the EPA Regional Haze Rule as published on July 1, 1999, and the ability to communicate its requirements and options to stakeholders;

Demonstrated knowledge of the science of regional haze and visibility, and the technical work products used in the policy analysis and debate necessary to determine "reasonable progress" toward the national goal of no man-made visibility impairment;

Demonstrated experience in policy analysis related to regional haze, including cost/benefit analysis and qualification of technical results used in policy decision-making processes;

In addition to the above key competencies, the Consultant's experience related to the following stakeholder processes would be highly desirable:

Grand Canyon Visibility Transport Commission;

Western Regional Air Partnership;

EPA FACA Subcommittee on Ozone, Particulate Matter, and Regional Haze Implementation Programs; and

Other stakeholder processes.

#### ATTACHMENT A: STANDARD TERMS AND CONDITIONS

- <u>AUTHORITY</u>: Provisions of this contract are pursuant to the authority set forth in 63-56, <u>Utah Code Annotated</u>, 1953, as amended, Utah State Procurement Rules (<u>Utah Administrative Code</u> Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE.
- CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE: The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
- <u>LAWS AND REGULATIONS</u>: Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.
- RECORDS ADMINISTRATION: The CONTRACTOR shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the CONTRACTOR for costs authorized by this contract. These records shall be retained by the CONTRACTOR for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The CONTRACTOR agrees to allow STATE and Federal auditors, and STATE Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
- <u>CONFLICT OF INTEREST</u>: CONTRACTOR represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
- CONTRACTOR, AN INDEPENDENT CONTRACTOR: The CONTRACTOR shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the STATE to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the STATE, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the CONTRACTOR by the STATE. The CONTRACTOR shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the STATE for these contract services. Persons employed by the STATE and acting under the direction of the STATE shall not be deemed to be employees or agents of the CONTRACTOR.
- <u>INDEMNITY CLAUSE</u>: The CONTRACTOR agrees to indemnify, save harmless, and release the STATE OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the CONTRACTOR'S officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.
- EQUAL OPPORTUNITY CLAUSE: The CONTRACTOR agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the CONTRACTOR agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
- <u>SEPARABILITY CLAUSE</u>: A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
- <u>RENEGOTIATION OR MODIFICATIONS</u>: This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the parties hereto, and attached to the original signed copy of the contract.
- <u>DEBARMENT</u>: The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by the STATE.
- 12. <u>TERMINATION</u>: Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
- 13. <u>SALES TAX EXEMPTION</u>: The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
- 14. WARRANTY: The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2)

the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgement to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

15. <u>PUBLIC INFORMATION:</u> Contractor agrees that the contract will be a public document, as to distribution of copies, and Contractor gives the STATE express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.

(Revision date: Apr 24, 2002)